

KIM CARRIGAN, JESSE McKIBBEN, and
SHIRLEY PAYTON,
Appellants

v.

ACTING EASTERN OKLAHOMA REGIONAL
DIRECTOR, BUREAU OF INDIAN
AFFAIRS,
Appellee

: Order Affirming Decision
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: Docket No. IBIA 01-71-A
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: March 22, 2001

This is an appeal from a January 2, 2001, decision of the Eastern Oklahoma Regional Director, Bureau of Indian Affairs (Regional Director; BIA), recognizing the conclusion reached by the General Council of the Quapaw Tribe ^{1/} concerning a governmental dispute within the Tribe. For the reasons discussed below, the Board affirms the Regional Director's decision.

Appellants Kim Carrigan, Jesse McKibben, and Shirley Payton were members of the Quapaw Business Committee who were removed from office at a September 9, 2000, meeting of the General Council. On October 5, 2000, Appellants' attorney wrote to the Field Representative, Miami Field Office, BIA, objecting to the General Council meeting and to a tribal election held on July 4, 2000.

The Field Representative responded on October 13, 2000, stating:

[T]he Interior Board of Indian Appeals * * * has consistently held that [BIA] must defer to the appropriate tribal forum in the legitimate exercise of its tribal powers. The Quapaw Tribe's Election Committee and Grievance Committee, and ultimately the General Council, are the appropriate bodies to address your complaints. It is our understanding that these bodies have determined that there is no merit to your challenges to the July 4, 2000, election and subsequent replacement of Business [Committee] members. The BIA recognizes the validity of these findings.

^{1/} The General Council is also called the Quapaw Indian Council. It comprises the adult membership of the Tribe.

Appellants appealed the Field Representative's decision to the Regional Director. On January 2, 2001, the Regional Director affirmed the Field Representative's decision. He stated in part:

The position of the Miami Field Representative is supported by case law. It is clear from decisions in Bucktooth v. Acting Eastern Area Director, 29 IBIA 144 (1996), Santa Clara Pueblo v. Martinez, 436 U.S. 49 [(1978)], and John v. Acting Eastern Area Director, 29 IBIA 275 (1996), that in making recognition determinations in its government-to-government role, the BIA does not purport to resolve a tribe's internal disputes or to serve as a tribal forum; therefore, we must concur with the decision of the Miami Field Representative and recognize the validity of the findings of the tribal forums.

Appellants then appealed to the Board. Their notice of appeal did not address the Regional Director's decision directly but instead discussed their objections to the tribal actions. The Board therefore ordered them to show why the Regional Director's decision should not be summarily affirmed in accordance with the rules described by the Field Representative and the Regional Director. The Board's order further stated: "If Appellants contend that the intra-tribal dispute has not been resolved in the appropriate tribal forum, they shall also show why they should not be required to exhaust their tribal remedies under the principles discussed in, e.g., Wanatee v. Acting Minneapolis Area Director, 31 IBIA 93 (1997)."

In their response, Appellants again challenge the tribal actions, contending that those actions were "tainted, void and of no effect." Response at 2. Appellants do not contend, however, that the General Council lacked the authority to remove them from office. Nor do they dispute the fact that they were present at the September 9, 2000, General Council meeting and were given an opportunity to respond to the charges against them or the fact that the General Council voted to remove them from office.

Appellants concede that they have not attempted to take their dispute to any other tribal forum. They contend, however, that they are not required to exhaust tribal remedies because of "the unique language of the tribal Governing Resolution, [2/] which distinguishes this case from both Bucktooth and Wanatee." Id. According to Appellants, the "Tribe and the United States Government agreed that the United States, acting through the BIA, would have a supervisory role over the affairs of the Quapaw Tribe, and specifically over the actions of its Business

2/ This document, a copy of which was furnished by Appellants, is titled "Resolution Delegating Authority to the Quapaw Tribal Business Committee to Speak and Act in Behalf of the Quapaw Tribe of Indians" (Resolution). The document shows that it was adopted by the Tribe on Aug. 19, 1956, and approved by the Commissioner of Indian Affairs on Sept. 20, 1957.

The copy furnished by Appellants appears to be a retyped version of the original.

Committee." Id. at 3. They contend further that the Resolution imposes an obligation on BIA which "goes far beyond any general trust responsibility that the BIA would have with regard to another Tribe that does not have such language in its agreement with the United States." Id.

The language upon which Appellants rely appears in section 5 of the Resolution. Their quotation from section 5 is misleading, however, in that it omits a substantial and critical portion of the section. Appellants' abbreviated quotation reads: "The Quapaw Tribal Business Committee is hereby empowered . . . to transact business of the Quapaw Tribe . . . so long as the affairs of the Quapaw Tribe are under the general supervision of the Federal Government, of the Commissioner of Indian Affairs or his authorized representative." (Omissions made and emphasis supplied by Appellants.)

Without Appellants' omissions, section 5 reads:

The Quapaw Tribal Business Committee is hereby empowered to appoint subordinate committee [sic] and representatives; to transact business of the Quapaw Tribe, including the management or disposition of tribal property and the expenditure of tribal funds, except such funds as may be due the members if [sic] the Quapaw Tribe as a result of the Quapaw Judgement Award against the United States (May 7, 1954), and any future claims, and such additional business the [sic] Tribe as the Quapaw Indian Council may see fit to delegate to the Quapaw Tribal Business Committee from time to time by appropriate resolution; provided however, that any ordinances passed by the Quapaw Tribal Business Committee governing membership, future membership or the loss of membership shall be subject to the approval of the Quapaw Indian Council and, so long as the affairs of the Quapaw Tribe are under the general supervision of the Federal Government, of the Commissioner of Indian Affairs or his authorized representative. [3/]

When section 5 is read in its entirety, it becomes apparent that the language regarding "general supervision" of the Tribe is relevant only where ordinances governing tribal membership are concerned. Section 5 clearly does not state that all actions of the Business Committee or the Tribe are to be supervised by the Federal Government. Nothing in the section relieves tribal members involved in an intra-tribal dispute of their obligation to exhaust tribal remedies before seeking relief from BIA or this Board.

It is apparent that Appellants cannot prevail here. If the General Council is the appropriate tribal forum for resolution of this dispute, then the matter has been resolved and BIA is bound by the results. Bucktooth, 29 IBIA at 149, and cases cited therein. If the General Council is not the appropriate forum, then Appellants have failed to exhaust their tribal remedies.

3/ This quotation is taken from the (apparently retyped) copy of the Resolution furnished by Appellants.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Regional Director's January 2, 2001, decision is affirmed.

Anita Vogt
Administrative Judge

Kathryn A. Lynn
Chief Administrative Judge